

Docket No.: 0071-0528P  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re Patent Application of:  
Masaru IRIYA et al.

Application No.: 10/622,571

Confirmation No.: 004799

Filed: July 21, 2003

Art Unit: 1772

For: WRAP FILM

Examiner: M. C. Miggins

**REQUEST FOR REFUND**

MS 16  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I. REFUND REQUEST

This is a request for a refund with respect to the payment requested to charge to Deposit Account 02-2448 at the time of e-filing for the above-identified

application

patent

A copy of the monthly statement in which the error referred to occurs, accompanies this request.

## II. FEES CHARGED FOR WHICH REFUND REQUESTED

|   | <u>AMOUNT OF<br/>REFUND<br/>REQUESTED</u> |
|---|---|
| <input type="checkbox"/> filing fee   | _____                                     |
| <input type="checkbox"/> search fee   | _____                                     |
| <input type="checkbox"/> examination fee  | _____                                     |
| <input type="checkbox"/> surcharge for filing the basic filing<br>on a date later than the filing date of<br>the application (37 C.F.R. § 1.16(e))        | _____                                     |
| <br>and/or  |   |
| <input type="checkbox"/> surcharge for filing the oath or declaration<br>on a date later than the filing date of the<br>application (37 C.F.R. § 1.16(e)) | _____                                     |
| <input checked="" type="checkbox"/> <b>extension of term</b>  |   |
| <input type="checkbox"/> first month  | _____                                     |
| <input type="checkbox"/> second month   | _____                                     |
| <input checked="" type="checkbox"/> <b>third month</b>  | <b><u>\$1,020.00</u></b>                  |
| <input type="checkbox"/> fourth month   | _____                                     |
| <input type="checkbox"/> excess claims  | _____                                     |
| <input type="checkbox"/> issue fee  | _____                                     |
| <input type="checkbox"/> petition fee   | _____                                     |

patent maintenance fee

first maintenance fee \_\_\_\_\_

second maintenance fee \_\_\_\_\_

third maintenance fee \_\_\_\_\_

patent maintenance fee surcharge

Other: Notice of Appeal fee \$500.00

TOTAL REFUND REQUESTED \$1,520.00

### III. EXPLANATION OF WHY CONTESTED CHARGE IS IN ERROR

A Notice of Allowance was prepared by the Examiner at least as early as November 15, 2006 (see the Status Date indicated on the attached search results from PAIR obtained in a search of PAIR on November 28, 2006). Accordingly, it was reasonable to assume that the Notice of Allowance would be mailed by the due date for filing a Notice of Appeal which was set to expire on January 25, 2007. However, it was surprising to find that the Notice of Allowance had not yet been mailed during a check of PAIR on January 23, 2007. During a telephone conversation between Examiner Miggins and Applicants' representative, Garth M. Dahlen, Ph.D., Esq. (#43,575) on January 23, 2007, Examiner Miggins indicated that the above-identified application would not go abandoned if Applicants do not file a Notice of Appeal on January 25, 2007 (see the Interview Summary form in the attached communication faxed from the Examiner on January 23, 2007). During a second telephone conversation with SPE Terrel Morris and Dr. Dahlen

on January 25, 2007, Mr. Morris agreed with Examiner Miggins' assessment that the above-identified application would not go abandoned if Applicants do not file a Notice of Appeal on January 25, 2007.

However, without support for Examiner Miggins' and SPE Morris' position in the MPEP, Applicants did not feel confident that the Application would remain pending without filing a Notice of Appeal with a three month extension of time fee on January 25, 2007. It was deemed safest to file the Notice of Appeal with the extension fee on January 25, 2007 and then subsequently ask for a refund. Should the PTO decide that Examiner Miggins and SPE Morris were correct, than Applicants would be due for a refund.

The PTO is requested to consider the following passage taken from MPEP 1302.03:

In *all* instances, both before and after final rejection, in which an application is placed in condition for allowance, applicant should be notified promptly of allowability of the claims by a Notice of Allowability PTOL-37. \*\* Prompt notice to applicant is important because it may avoid an unnecessary appeal... (Emphasis in original).

Based on this passage, the PTO is aware that forwarding a Notice of Allowability promptly could avoid unnecessary appeal.

It is Applicants' position that the delay in forwarding a Notice of Allowability of over 71 days (the duration between the entry date of the Notice of Allowance of November 15, 2006 and the due date for filing the Notice of Appeal of January 25, 2007) is UNREASONABLE, and Applicants should not be charged for the Notice of Appeal fee and the extension of time fee. Accordingly, Applicants respectfully request the refund of the total fee in the amount of \$1,520.00.

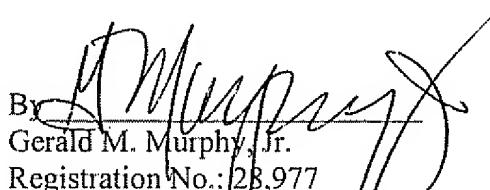
#### IV. MANNER OF REFUND

Please make refund by crediting Account No. 02-2448.

We respectfully request that the attached copy of this letter be returned to us with an indication that the credit has been processed.

Dated: January 31, 2007

Respectfully submitted,

By   
Gerald M. Murphy, Jr.  
Registration No.: 28,977  
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Suite 100 East  
P.O. Box 747  
Falls Church, Virginia 22040-0747  
(703) 205-8000  
Attorney for Applicant

Attachments: 1) Search Results from PAIR obtained November 28, 2006;  
2) Communication faxed from Examiner Miggins on January 23, 2007

Search results as of: 11-28-2006::09:49:07 E.T.

### Bibliographic Data

|                         |                                 |                            |   |
|-------------------------|---------------------------------|----------------------------|---|
| Application Number:     | 10/622,571                      | Customer Number:           | -   |
| Filing or 371 (c) Date: | 07-21-2003                      | Status:                    | Allowed -- Notice of Allowance Not Yet Mailed |
| Application Type:       | Utility                         | Status Date:               | 11-15-2006                                    |
| Examiner Name:          | MIGGINS, MICHAEL C              | Location:                  | ELECTRONIC                                    |
| Group Art Unit:         | 1772                            | Location Date:             | -   |
| Confirmation Number:    | 4799                            | Earliest Publication No:   | US 2004-0086667 A1                            |
| Attorney Docket Number: | 0071-0528P                      | Earliest Publication Date: | 05-06-2004                                    |
| Class / Subclass:       | 428/035.700                     | Patent Number:             | -   |
| First Named Inventor:   | Masaru Iriya , Suzuka-Shi, (JP) | Issue Date of Patent:      | -   |

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Title of Invention: WRAP FILM

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GROUP FAX NUMBER: 703-315-3599

GROUP PHONE NUMBER: 703-308-0

# GROUP 1100 FAX COVER SHEET

DATE: 1/23/07

APPL. NO.

(0/622, 571)

TO: Earth Palan

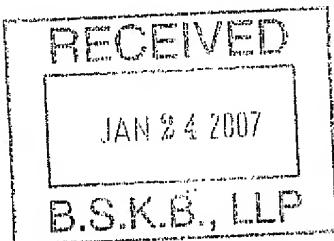
0071-0528PUS

FAX NUMBER:

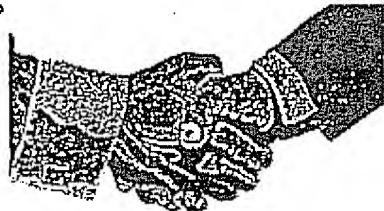
703-205-8050

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THIS OFFICE BY USING THE PHONE NUMBER PRINTED  
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|                          |                                |                  |
|--------------------------|--------------------------------|------------------|
| <b>Interview Summary</b> | Application No.                | Applicant(s)     |
|                          | 10/622,571                     | IRIYA ET AL.     |
|                          | Examiner<br>Michael C. Miggins | Art Unit<br>1772 |

All participants (applicant, applicant's representative, PTO personnel):

(1) Michael C. Miggins (3) \_\_\_\_\_  
 (2) Garth Dalan (4) \_\_\_\_\_

Date of Interview: 13 January 2006.

Type: a) Telephone c) Video Conference  
 c) Personal [copy given to: 1) applicant 2) applicant's representative]

Exhibit shown or demonstration conducted: d) Yes e) No.  
 If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: none.

Identification of prior art discussed: none.

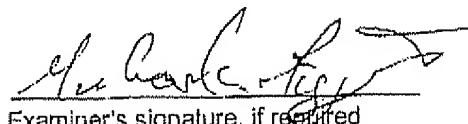
Agreement with respect to the claims f) was reached. g) was not reached. h) N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: A notice of allowance has been prepared for this case and was counted in 11/06. There have been some delays in mailing due to second pair of eyes review. Mr. Dalan is assured that the case will not go abandoned at this time, however, prosecution may be re-opened pending review.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See 37 CFR Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an attachment to a signed Office action

  
 Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135 (35 U.S.C. 132).

### 37 CFR §1.2 Business to be transacted in writing

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in addition to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiner's Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (If Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner.
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner.  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

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### REASONS FOR ALLOWANCE

1. The following is an examiner's statement of reasons for allowance:

With regard to claims 1 and 14 the prior art fails to disclose a polyester wrap film having a cling energy of 0.5 to 2.5 mJ, a pulling out force of 5 to 100 cN, a surface roughness of 0.5 to 4.0 nm.

The examiner agrees with applicant's arguments of 4/5/06 in that the prior art fails to teach or suggest the surface roughness of the film and the pulling out force. The prior art also does not teach or suggest the relationship between the cling energy and the surface roughness of the film.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael C. Miggins  
Primary Examiner  
Art Unit 1772

MCM  
November 13, 2006